IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

CRL.A.No. 870 of 1999(C)

CC.8/1995 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR

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APPELLANT: 1ST ACCUSED

T.A.JOLLY
S/O.AUGUSTIN
THYKOOTTATHIL HOUSE
KOTHAD.

BY ADV. SRI.K.K.JAYARAJ NAMBIAR

RESPONDENT: COMPLAINANT

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

NO REPRESENTATION. DISMISSED FOR NON-PROSECUTION.

25.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R. UDAYABHANU, J.

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CRL.A.NOs. 870, 911 & 916 OF 1999

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DATED THIS THE 30TH OCTOBER 2007

JUDGMENT

The appellant in Crl.A.No.870/1999 is the first accused, the appellant in Crl.A.No.916/1999 is the 2nd accused and the appellant in Crl.A.No.911/1999 is the third accused in C.C.No.8/1995 in the file of the Enquiry Commissioner & Special Judge, Thrissur. The appellants stand convicted for the offences under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and under Sections 406 , 409 & 120B I.P.C. and sentenced : accused 1 and 2 to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.10,000/- each and in default to undergo simple imprisonment for six months for the offence under Section 13(1)(d) read with Section 13(2) of the Act and to undergo rigorous imprisonment for a period of one year for the offence under Section 409 I.P.C. The third accused is sentenced to undergo rigorous imprisonment for a

period of one year for the offence under Section 120B and to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for six months for the offence under Section 406 I.P.C.

2. During the pendency of the proceedings herein, the 2nd accused expired and his L.Rs. got impleaded.

3. The prosecution case is that the first accused being the President of Kadamakudi Panchayat, 2nd accused the Executive Officer therein and 3rd accused, a Contractor entered into a criminal conspiracy and committed criminal misconduct and thereby enabled the 3rd accused, the contractor to have undue pecuniary advantage with respect to the petty contract work executed in October 1998, i.e. urgent repairs and maintenance of Kannoth thara road in ward No.VII and obtained undue pecuniary advantage to the tune of Rs.2770.89 to the 3rd accused.

4. The evidence adduced in the matter consisted of the testimony of Pws.1 to 9 and Exts.P1 to p23. The defence

examined Dws.1 and 2 and got marked Exts.D1 and D2.

5. Exts.P17 to P19 are the complaints received by the Director of Panchayat & Vigilance & Anti Corruption Bureau in this regard and Pws.4 and 5 are the persons who sent the complaints. PW6, the Deputy Director of Panchayat submitted Ext.P20 report to the Director of Panchayat suggesting on the spot inspection. PW1, the Taluk Panchayat Officer conducted an enquiry into the matter after verification of the records and on the spot inspection. Pw2, the Overseer of the department conducted on the spot inspection and measured the works numbering 89 all of which were the subject of the complaints. Ext.P13 is the report submitted by PW2. He conducted inspection along with verifying M book, i.e.Ext.P5 wherein the measurement with respect to the work involved therein is contained in Ext.P5(a). Item No.50 of Ext.P13 submitted by PW2 contained the result of examination with respect to the work involved therein. It is mentioned in Ext.P5 that earth work to the tune of 50.04, gravelling work to the tune of Rs.2720.85 and soil spreading to the tune of R.287.65 were shown to have been

done. But as per Ext.P13, item No.50 the inspection of PW2 revealed that no earth work or gravelling work was done and hence the Panchayat has sustained a loss to the tune of R.2770.89. He could not identify the soil spreading as the details mentioned in Ext.P5 was not sufficient to identify the same. It was PW3, the clerk of Kadamakudi Panchayat who accompanied Pw2, the Overseer and showed him the works as PW2 was not acquainted with the spots in the locality. In Ext.P14 statement prepared by PW3, it is noted the dates of each of the works inspected by PW2.

6. PW1, the Taluk Panchayat officer has proved the relevant records produced in the matter. PW3, the clerk of the office has identified handwritings of the signatures of accused 1 to 3 in the relevant records. It has also come out that the work involved was allegedly executed and amounts paid within no time. Ext.P2 file contained the estimate , agreement, bill etc. Ext.P3 is the minutes book of the Panchayat and from which it could be seen that as per Resolution No.265 the particular work was estimated for Rs.3100/- and administrative and technical

sanction was accorded. Tender was invited and the tender submitted by the 3rd accused was proved vide Ext.P2(b). The agreement was executed between the 2nd accused, Executive officer and the 3rd accused, the Contractor on 14-10-1988. On the next day, i.e. 15-10-1988, the 3rd accused submitted the completion report of the work and and Ext.P2(c) final bill submitted by 3rd accused was passed by accused 1 and 2 and on 17-10-1988 cheque for R.3059/- was paid to the 3rd accused. As per agreement the work was to be completed by 30-10-88. It is also seen that in Ext.P2(c) final bill although the date is shown as 17-10-88, the figure 7 in 17 is an overwriting and the date was 15. In the final bill the measurements are stated to have been taken on 7-10-1988 and 17-10-88. But Ext.P5 M book contains no measurements taken on 7-10-88. But the measurements are seen taken on 11-10-88. But as per Ext.P6 diary of the 2nd accused, the Executive officer, he had visited Ward No.VII on 15-10-88 only. There is no measurement taken by the 2nd accused on 17-10-1988 whereas as per Ext.P5(a) entry there is an endorsement that he executed the

measurement on 17/10, but the signature is dated 15/10 in column No.10 in Ext.P5(a). On 17-10-1988 itself the cheque was encashed by the 3rd accused which can be seen from Ext.P8 pass book of A/c. No. 1492 with the Co-Operative Bank, Ernakulam. The reports of Pws.1 and 2 tallies with respect to the particular work allegedly executed and the version of PW3 and Ext.P14 established the fact that he identified the work for the purpose of inspection by PW2. The work had to be check measured by the first accused, Panchayat President in the presence of the concerned ward member. The presence of the ward member is not reported. Ext.P2(c) is the entry with respect to the check measurement by the first accused. Pw4, one of the complainants is also a member of Ward No.I.

7. The Vigilance & Anti Corruption Bureau got the matter enquired into by the Panchayat authorities at first and it is subsequently that the F.I.R. was registered by PW9, the Assistant Commissioner of Police vide Ext.P23 dated 31-8-1991, although the complaint is dated 6-4—1989. PW8, the Circle Inspector, SBCID conducted the investigation, i.e. took into custody of the

documents involved and questioned the witnesses. As already noted above, there is discrepancy with respect to the date of taking measurement and on the next day of the execution of the agreement, entrusting the work with the 3rd accused, the completion report is filed and every formalities envisaged like check measurement was over and the cheque handed over and encashed by the 3rd accused on 17-10-1988 itself whereas the work was to be completed only by 30-10-1988. PW2, the Overseer who inspected the site has specifically recorded in Ext.P13(b), that is, item No.50 in the report that no earth work or gravel spreading was seen done and that he could not measure the soil spreading since the area was not specified in the M book. As per the details of the work entrusted earth work is to be done at first and then gravel work and thereafter soil spreading. As noted above, Ext.P2(c) final bill contained correction and also in Ext.P5(a) M book entry the signature of the 2nd accused is dated 15/10.

8. The contention that the terrain is liable to be water logged and susceptible inundation was rightly rejected in view of

the evidence of PW2, there was no such water logging at the time when he inspected the works. The date of inspection is not much belated, i.e. more than seven months and works are not expected to be washed out by the above period. The contention that the investigation officer prepared no scene mahazar, I find, was rightly rejected as there is no specified mode in which the mater has been investigated. The contention that in Exts.D1 and D2 movement registers the visits of Pws.2 and 3 are not mentioned was also rightly rejected as the inspection by PW2 is well documented, and when accompanying PW2, a superior officer the movement out of office by PW3 need not be recorded in the movement register.

9. The other contention is that PW8 was not an empowered officer. The date of notification empowering officers of the cadre upto the Inspectors is dated 2-3-1993 vide notification No.120994/C1/88/Vig. and that it is only for a short period that PW8 was not the empowered officer. Crime was registered on 31-8-1991 by the Assistant Commissioner, i.e. Ext.P9. The above is no reason to set aside the proceedings unless it is

established that prejudice has been caused to the accused. Nothing is brought out to show that any prejudice as such has been caused. (See **Sankarankutty v. State of Kerala, 2000 (2)K.L.T. 1; State of Haryana v. Bhajan Lal, AIR 1992 S.C.604; State Inspector of Police, Visakhapatnam v. Surya Sankaram Karri, JT 2006(8) SC 177**). Hence, the conviction of accused 1 and 2 for the offences under Sections 13(1)(d) read with Section 13(2) of the Act and Sections 406, 409 & 120 B I.P.C.is confirmed. So far as 3rd accused is concerned, I find that offence under Sections 406 & 409 I.P.C. will not be attracted as well as Section 13(1)(d) read with Section 13(2) of the P.C. Act as such. But he is liable to be convicted under Section 120 B I.P.C. Hence, the conviction of 3rd accused under Section 120B I.P.C.only is confirmed.

So far as the sentence is concerned, counsel has pleaded for leniency pointing out that the amount involved is too meagre and that about 18 years have elapsed since the commencement of the proceedings in the matter and the first accused is past 60 and that he was underwent amputation and is ailing. In the

circumstances, the sentence imposed on the first accused for the offence under Sections 13(1)(d) read with Section 13(2) of the Act is modified to imprisonment till the rising of the court and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for six months. The 3rd accused is sentenced to imprisonment till the rising of the court and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for six months. Accused 1 and 3 are granted two months time to remit the fine amount. They shall appear before the Enquiry Commissioner & Special Judge on 1-1-2008 to receive sentence. The Crl.appeals are disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. NOS. 870,911 & 916
OF 1999

JUDGMENT

30-10-2007